

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

FRANKLIN SCHOOL DISTRICT
SAU 18

DECISION OF THE HEARING OFFICER

Appearances: Melissa A. Hevey Esq., Attorney for the employer

Nature of Dispute: RSA 275-E: 2 I (a) protected reporting
RSA 275-E: 2 I (b) termination for protected participation in a hearing

Employer: Franklin School District SAU 18, 119 Central Street, Franklin, NH 03235

Date of Hearing: November 14, 2013 (closing summations due on December 2, 2013)

Case No. 46399

BACKGROUND AND STATEMENT OF THE ISSUES

The claim under the Whistleblowers' Protection Act was filed on July 29, 2013. The claimant is alleging harassment by the Superintendent and an illegal termination. The claimant reported the incidents to the School Board. The resolve for the Whistleblowers' Claim is to be reinstated to his position as the Head Coach of the varsity football team.

The claimant testified that he was in a contract position and hired on a one year contract. The actual contract sometimes was signed after the football season began and was paid in full at the end of the season. The claimant said that everything was going fine over the years until he and his wife were in a divorce proceeding . His wife at that time also worked for the school district. It was at this point the claimant said that he was criticized for the process of a fund raising program for the football team. He said that he was also criticized for the presence of females at the football camp. These issues were discussed with the administration and the claimant felt that they had been dealt with by both sides.

The football program also received several notices from the New Hampshire governing body for athletics. The New Hampshire Interscholastic Athletic Association (NHIAA) put the system on notice for several events that took place. The governing body did not take any official action except to say that the group did say that the football program in Franklin would be under, "...careful scrutiny in the coming years.....". This was not the first review to be conducted by the NHIAA over the program at Franklin. This report was issued to the Principal of Franklin High School and the Principal of Mascoma Valley Regional High School. The letter was sent on March 27, 2013.

The claimant maintains that the supervisory structure in the school system relied on a report that had no findings to terminate his contract. He believes that all of the other issues contributed to his non selection for a future contract. Even though his most immediate evaluations had been good, the Franklin School Board went into Non Public Session, on April 15, 2013. The results of the Non Public Session, was that the Board was going to seek a new head football coach. The claimant was thanked for his years of service. The motion to do this was carried by a unanimous vote of the Board.

The claimant maintains that he was terminated because he challenged the Board and members of the Administrative hierarchy. He felt that the Board was not following the laws of public hearings and he felt the administration was not listening to his claims about discriminatory handling of his complaints. The administrators were violating many of the internal policies for employees.

The Chairperson of the SAU 18 School Board testified that they reviewed any complaints that came to them and at one point hired their contracted law firm to do an independent study of the situations brought forward by the claimant. The report was presented to the Board for review and put on file.

The witness stated that the Board received the last NHIAA report on the Franklin Football Program and went into "non-public" session to discuss the issue . The minutes of the "non-public" session were sealed and not brought out to the public. However, the public vote of the Board was unanimous to ask the Superintendent to seek a new football coach. The witness said that this was the second incident of a NHIAA review and because responsibility of dealing with students it was voted to not re-hire the claimant to another coaching contract.

FINDINGS OF FACT

RSA 275-E: 2 I (a) No employer shall harass, abuse, intimidate, discharge, threaten, or otherwise discriminate against any employee regarding compensation, terms, conditions, location or privileges of employment because: (a) The employee, in good faith, reports or causes to be reported, verbally or in writing, what the employee has reasonable cause to believe is a violation of any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States; (a) and (b)

RSA 275-E: 2 I (b) The employee objects to or refuses to participate in any activity that the employee, in good faith, believes is a violation of the law;

These sections of the law are designed to protect an employee for employer actions when the employee reports a violation(s) of law or participates in a hearing on violations of law.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the claim made under the Whistleblowers' Protection Act is invalid.

The claimant had the burden to show that the employer took adverse action because of the reporting of violations of law. The claimant can also shift the burden to the employer during the hearing. The claimant did not bear his burden in either one of these situations.

The claimant did not prove that the reporting of his belief that laws and administrative policies had been violated because of an attitude certain administrators had towards him because of a personal situation. In fact it is found that this claim did not show that a non-renewal of a contract, was an adverse job reaction brought on by any protective reporting.

The claimant did report issues and did meet with administrators over the issues. The claimant did receive high ratings on evaluations after reporting some of the issues. The claimant did not establish that the action of the school district Board had any relation to his marital status. The claimant did not establish that the fund raising process of the attendance at the football camp were the moving factors in the non-renewal of his contract.

The employer was credible that the final review from the NHIAA was the deciding factor. It was the accumulation of the report, the first report and the review of the program and the further review of all sports programs that caused the Board to act.

It is found that the complaint is based on a non-renewal of a contract to coach football and the claimant is calling this action an adverse action because of his reporting of laws and rules being violated. The Hearing Officer does not find this to be true. The employer acted on a report from the NHIAA with no conclusions but acted on behalf of the city and the students . This is within their rights.

The claim is invalid.

DECISION AND ORDER

As required by Appeal of Mary Ellen Montplaisir 147 N.H. 297 (2001), this Department is required to apply a "mixed motive analysis" on the evidence presented. Because of the circumstantial nature of the evidence alleged by the claimant, the analytical framework of a "pretext analysis" is appropriate. Under this analytical framework, the claimant has the initial burden of establishing a *prima facie* case of unlawful conduct/retaliation. This requires the claimant to show:

1. he engaged in an act protected by the statute;
2. he suffered an action proscribed by the statute (discrimination/termination); and
3. there was a causal connection between the protected act he engaged in (her report of and the action he suffered as a result of that protected act (discrimination and termination).

The establishment of a *prima facie* case creates a presumption that the employer unlawfully retaliated against the claimant. The burden of proof then shifts to the employer to rebut the claimant's assertions with evidence that their action was taken for legitimate, non-retaliatory reason(s). This burden of proof is only one of production. The claimant retains the burden of proof to persuade. In response to the employer's rebuttal, the claimant has the opportunity to show that the proffered legitimate, non-retaliatory reason for the action was not the true reason for the unlawful conduct/retaliation, and that his assertion was the true reason for the unlawful conduct/retaliation. The claimant can show this by establishing that the employer's proffered reason for the action is either not credible, or by directly showing that the action was more likely motivated by retaliation in response to his protected act.

The Hearing Officer does not find that the claimant shifted the burden to the employer. The employer was credible in stating the reason for their action. The claimant did not prove that there were violations of law that led to the non-renewal of the contract to coach football. The claim under the Whistleblowers' Protection Act is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 17, 2013

Original: Claimant
cc: Employer

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TFH/all